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# Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1237

STATE OF NEW YORK,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA (relative to the condemnation by the United States of certain easement rights in 220 acres of land in Essex and Hamilton Counties, New York).

## PETITION FOR REHEARING OF APPLICATION FOR CERTIORARI.

NATHANIEL L. GOLDSTEIN,  
*Attorney General of the State  
of New York,  
Attorney for Petitioner.*

# Department of the United States

January Term, 1904

IN SENATE

January 1, 1904

Report of

the

Commissioner of the General Land Office

for the year ending June 30, 1903

with a statement of the progress of the work of the Department during the year

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## PETITION FOR REHEARING OF APPLICATION FOR CERTIORARI

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The petition for certiorari was denied on June 2, 1947, and this petition for rehearing is filed within twenty-five days thereafter.

Its sole ground is that the Court may have overlooked one of the questions relied upon in the earlier petition. That petition alleged that three questions were presented. The brief for the United States in opposition alleged that only

two questions were presented, ignoring and offering no defense upon the first question presented by the State. The question thus passed was vital to this litigation, and moreover is an important question of statutory interpretation.

As it appears to the State, the United States has conceded (although by silence, and the concession may have escaped the Court's notice) that the power of condemnation asserted and exercised by the Secretary of War was different from the power conferred upon him by Congress. Different, and broader.

His power under the Second War Powers Act was only to condemn what was "deemed necessary, for military, naval or other war purposes". But the power he asserted and exercised was to condemn what was "*necessary and advantageous*", "*for military or other public purposes*". (R. 136-137, emphasis added.) He took lands in the Adirondack State Park for a railroad, for the period of the war, plus a period of fifteen years. The latter is contested. It is a fair presumption that it was deemed by the Secretary merely "*advantageous*" rather than necessary, and for "*public purposes*" other than military ones. If so, it was unauthorized by the statutory authority involved.

It has seemed sufficient to the United States, and to the lower courts (and, it may be, to this Court also) that the statutory authority could have been spread over this entire condemnation *if* the Secretary had so declared. That is, if he had declared that the entire condemnation was "*deemed necessary, for military, naval or other war purposes*", the courts would have accepted that form of declaration by him as demonstrating that the condemnation was under the proper statutory authority.

The fact is, he declared something quite different, the form of which demonstrates that the condemnation was *not* under the statutory authority. It has been thought, in view of the way this question has been obscured in the brief for the United States, that it should be pressed upon the Court's attention by this petition for rehearing, which is most respectfully submitted.

Albany, June 7, 1947.

NATHANIEL L. GOLDSTEIN,  
*Attorney General of the State  
of New York,  
Attorney for Petitioner.*

WENDELL P. BROWN,  
*Solicitor General,*  
HENRY S. MANLEY,  
*Assistant Attorney General,  
of Counsel.*

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I, HENRY S. MANLEY, counsel for the above named petitioner, do hereby certify that the foregoing petition for a rehearing is presented in good faith and not for delay.

HENRY S. MANLEY.